IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 818 of 2000

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09.03.2000in WP NO : 20053 OF 1996 on the file of the High Court.)

Between:

Union of India and others

..... APPELLANTS

AND

R.K.Dalal

.....RESPONDENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 818 of 2000

JUDGMENT: (Per Hon'ble Smt. Justice T.Meenakumari)

There is no representation on behalf of the respondent herein. The record shows that there was no representation on behalf of the respondent on 22.07.2005 and 25.07.2005. Hence, the matter is decided basing on the material available on record.

Aggrieved by the order of the learned single Judge dated 09.03.2000 in W.P.No.20053 of 1996 allowing the writ petition, the respondents 1 to 5 therein, filed this writ appeal.

The Writ Petition was filed by the respondent herein questioning the action of the appellants in not promoting him as Naib Subedar in January,1989 as per the existing policy on that date, and for a consequential direction to the appellants herein to promote the respondent herein to the post of Naib Subedar with effect from 08.01.1989 and further promote him to the next rank of Subedar with ante-date seniority with effect from 01.01.1992 and grant all consequential benefits.

The brief facts that led to filing of the said writ petition are that the respondent/petitioner joined the Army as Sepoy on 15.01.1974 and thereafter, he was promoted to the post of Lans Naik. As per the channel of promotion, a Sepoy is eligible to be promoted as Lans Naib, and from that category to Naib and thereafter Havaldar Major (Tech). But, under the Rules any of the employee working in the category of Sepoy and Lans Naib are eligible to be appointed to the post of Havaldar Major (Tech) skipping the intermediary category by qualifying in the Common Entrance Test conducted by the authorities.

The matter has been contested by the appellants stating that the respondent herein is not entitled for promotion in view of the fact of evolving of the policy vide Circular
No. 9430/AG/PS.2(c), dated 18.12.1985, in whcih the rules relating to the annual confidential reports for promotion to certain posts are given and the promotion policy was in force from 01.01.1986 to 31.12.1987. It is further argued that for the purpose of promotion to the post of Naib Subedar, one must earn five annual confidential reports, out of which, three must be above average and one should be in the category of Daffedar/Havaldar, while he was on regimental duty or as an instructor in any Army School. It is also argued before the learned Single Judge that no annual confidential reports are maintained for Sepoys and Lans Naibs and annual confidential reports are maintained only for the rank of Naibs. But, the learned single Judge has observed that the appellants have placed no material to substantiate the said contention. It has been observed by

the learned single Judge that most of the personnel working in the lower categories are being appointed as Havaldar Major (Tech) through the process of common entrance test and no one is able to satisfy the criteria prescribed for promotion as per the interpretation by the appellants on Circular dated 18.12.1985, with the result, as on 31.12.1988, as many as 189 posts of Naib Subedars were left unfilled. The policy has been changed by Proceedings No. B/12500/EME.Pers., dated 25.01.1988 amending the circular 18.12.1985. The extract of the Circular dated 25.01.1988 is as follows:

‘”A.C.R. CRITERIA FOR PROMTION: HMsT to NB SUB TECH:”

1. Reference point referred to Addl.DG EME (P&A) during his visit to EME Records on 09.01.1988.

2. HMT Cadre is exclusive toEME. It is a selective and superior technical cadre. A Cfn promoted L/NK, on qualifying competitively in HMT entrance examination and thereafter successfully completing HMT Courses, can be prooted as HMT.

3. HMst, in their turn, may be promoted as Nb Subs Tech on satisfying the mandatory criteria of earning at least one report as HMT with favourable recommendation for promotion.

4. In the event of an HMT, having earned more than one report, he should have been recommended for promotion in the last report.

5. In the event of the recommendation for promotion in the last report is negative and is not consistent with the

previous reports, the case will be referred to Dte Gen of EME (EME Pers) for a decision.

6. This has the approval of Addl DG EME (P&A).

PARA 4: Reconstructed as under: vide Army HQs letter No.B./12500/EME Pers dt.13 Feb 89; “in the event of an HMT having earned more than one report, he should have been recommended for promotion” in the last three reports.

PARA 5: Deleted vide Army HQs letter No.B/12500/EME Pers dated 13 Feb 89 and paragraph –6 renumbered as paragraph 5.”

The learned single Judge has observed that Havaldar Major (Tech) is an exclusive cadre and selective technical cadre for EME and the appointment to the post of Havaldar Major (Tech) from the post of Lans Naib and passing of competitive examination were also referred to in the circular and the respondent herein has fulfilled the required qualifications and hence is eligible for being promoted as Naib Subedar. The learned single Judge has further observed that while the Circular of 1985 insists for five annual confidential reports, under this new circular, it is suffice if a Havaldar Major (Tech) earns one annual confidential report, which is mandatory for promotion to the post of Naib Subedar (Tech) and the rules relating to the prescription of annual confidential reports may also be changed according to the convenience of the department and this deviation has been made by the Army Headquarters keeping in view the fact that many posts of Naib Subedars are left unfilled for number of years.

The learned counsel appearing on behalf of the appellants-department contended that the observations made by the learned single Judge have no basis in view of the fact that no *mala fides* can be attributed to the department with regard to the rules relating to the prescription of annual confidential reports that can also be changed according to the convenience of the department. The said policy was very much in force and nearly 67 persons in the cadre of Havaldar

Major (Tech) were promoted on 14.02.1989 and the respondent herein earned two annual confidential reports in the category of Havaldar Major (Tech) for 1987-88. According to the appellants department, the respondent has made statutory appeal against one of annual confidential reports of 1989 and after disposal of the same, the appellants have considered the case of the respondent herein and promoted him to the post of Naib Subedar on 01.10.1992 and he retired as acting Subedar on 01.02.2000. Further, the observation of the learned single Judge that the respondent herein was eligible for appointment as Naib Subedar as on 08.01.1989 is also without any basis in view of the fact that the respondent has filed a statutory appeal against the annual confidential report of 1989 and the appeal was disposed of on 15.06.1992 and after that only he has been promoted to the post of Naib Subedar. The finding of the learned single Judge that when a benefit is given to the in service candidates to get appointed as Havaldar Major (Tech) by appearing for the common entrance test skipping the cadre of Naik post for which annual confidential reports will be maintained as per the version of the appellants, and it is not known as to how the department can insist for four annual confidential reports in the post of Lans Naib, when his case was considered for appointment to the post of Havaldar Major (Tech) on the basis of a common entrance test without working in the category of Naik, is against the policy of the promotion as envisaged by the appellants-department. The learned counsel for the appellants-department contended that this Court cannot sit over the appeal against the promotion policy as envisaged by the appellants-department, as the maintenance of annual confidential reports is one of the regulatory measures to know the working capacity of the in-service candidates to arrive at the conclusion for promoting them to the next post. Further, the observation of the learned single Judge that the circulars with regard to the maintenance of the annual confidential reports emanated due to non-application of mind, which resulted in not only depriving the eligible candidates to get promotions but also in impairing the work in an essential department like the Army is without any basis and

accordingly it is liable to be set aside in view of the fact that the promotion policy is in force since decades and there are no motives attributed to the appellants department.

On the background of the above observations of the learned single Judge, it has to be observed that the promotion policy for the post of Naib Subedar was in existence since many decades and that policy was evolved from time to time and the annual confidential reports are maintained only to arrive at the suitability of the candidates for onward promotion to the post of Naib Subedar and also to the post of Naib from the post of Havaldar Major (Tech). The fact that the policy being changed from year to year is not disputed. It has to be further observed that there is no material placed before the learned single Judge to show that firstly with regard to the promotion policy, the circulars have been issued only to suit the convenience of the department and secondly the maintenance of the Annual Confidential Reports are emanated due to
non-application of mind. In the absence of such material before the learned single Judge, we have no hesitation to hold that the findings and the observations of the learned single Judge made in the order now challenged have to be set aside and accordingly they are set aside and consequently the Writ Petition is dismissed.

In the result, the Writ Appeal is allowed as prayed for.

_____

T.MEENA KUMARI, J

_____

P.LAKSHMANA REDDY J

Dated:28-07-2005

Ccm/kvrk